

Instrument prepared by:

VIRGINIA GAS AND OIL BOARD

Order recorded under:

**CODE OF VIRGINIA
§ 45.1-361.26**

BEFORE THE VIRGINIA GAS AND OIL BOARD

**RELIEF
SOUGHT:**

An Order for Disbursement of Escrowed Funds ☐
(and Authorization for Direct Payment of Royalties)

JURISDICTION:

Code of Virginia § 45.1-351. (et seq) AND § 45.1-361.22 (et seq)

UNIT/WELL NAME: EE33

TRACT(S): 2C, 2D, 999

LOCATION: BUCHANAN, RUSSELL County, Virginia

DOCKET NUMBER: VGOB-02-0820-1054-02

APPLICANTS:

CNX Gas Company LLC on behalf of CNX Gas Company LLC, Dollie S. Absher, Jackie
Richardson, Phyllis Richardson, Swords Creek Land Partnership

HEARING DATE AND LOCATION:

Russell County Government Center, Lebanon, Virginia ☐
November 18, 2014

APPEARANCES:

Mark A. Swartz on behalf of CNX Gas Company LLC

PRIOR PROCEEDINGS:

1. Original Pooling Order Executed 07/20/2004, Recorded on 07/22/2004, Deed Book/Instrument No.
613, Page 700.
2. Original Pooling Order Executed 07/20/2004, Recorded on 07/22/2004, Deed Book/Instrument No.
613, Page 700.
3. Supplemental Order Executed 03/08/2005, Recorded on 03/14/2005, Deed Book/Instrument No.
626, Page 988.
4. Disbursement Order -01 Executed 03/09/2006, Recorded on 03/13/2006, Deed Book/Instrument
No. 649, Page 0124.

BOOK 0784 PAGE 351

140002057

NOTICE:

The Unit Operator gave notice to the Applicants that the Board would consider its disbursement petition at the November 18, 2014 hearing and considered whether to:

- (1) Amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tract(s) 2C, 2D, 999 identified in the attached petition.
- (2) Delete the requirement that the Unit Operator place future royalties attributable to Tract(s) 2C, 2D, 999 relative to the interests of the Applicants identified in the attached petition.
- (3) Close the escrow account under this docket number.

FINDINGS: Code of Virginia § 45.1-361.22

Applicant has certified and represented to the Board that:

The escrow account has been overpaid; Swords Creek Land Partnership and Jackie Richardson and Phyllis Richardson have entered into Royalty Split agreement. Said agreement allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and the annexed Table 1, further, specifies how said royalties are to be divided and paid. ☐

In addition, Dollie S. Absher is entitled to 100% of the CBM royalties awarded under Case No. 11000283-00 and affirmed by Senior Justice Charles S. Russell, Opinion dated September 12, 2014, Record No: 131590. Said decision allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and the annexed Table 1, further, specifies how said royalties are to be paid. ☐

There are no remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

RELIEF GRANTED:

1. The Escrow Agent is ordered, to within ten (10) days of receipt of this executed order, disburse funds for the unit and applicants detailed in Table 1 and 2.
2. The Escrow Agent is ordered to close the Escrow Account for the Subject Drilling unit based on the attached Revised Exhibit E which replaces all prior Exhibit E's recorded for the Subject Drilling Unit.

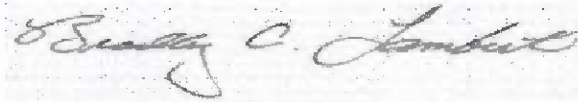
CONCLUSION:

Therefore, the requested relief and all terms and provisions set forth above be and hereby are granted and IT IS SO ORDERED.

APPEALS:

Appeals of this Order are governed by the provisions of the Code of Virginia § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

DONE AND EXECUTED this 20 day of November, 2014 by a majority of the Virginia Gas and Oil Board.



Chairman, Bradley C. Lambert

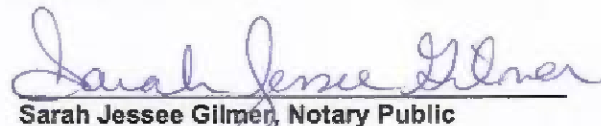
DONE AND PERFORMED this 20 day of November, 2014 by Order of the Virginia Gas and Oil Board.



Rick Cooper
Principal Executive to the
staff, Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA
COUNTY OF RUSSELL

Acknowledged on this 20th day of November, 2014, personally before me a notary public in and for the Commonwealth of Virginia, appeared Bradley C. Lambert, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and appeared Rick Cooper, being duly sworn did depose and say that he is Principal Executive to the staff of the Virginia Gas and Oil Board, that they executed the same and was authorized to do so.



Sarah Jessee Gilmer, Notary Public
262946

My Commission expires: July 31, 2017



BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL

DOCKET NO: VGOB 02-0820-1054-02

RELIEF SOUGHT: (1) DISBURSEMENT FROM
ESCROW REGARDING TRACT(S) 2C, 2D, 999
(2) AND AUTHORIZATION FOR DIRECT
PAYMENT OF ROYALTIES

HEARING DATE: November 18, 2014

DRILLING UNIT: EE33

BUCHANAN, RUSSELL COUNTY, VIRGINIA

PETITION FOR ORDER OF DISBURSEMENT OF ESCROW FUNDS

1. Petitioner and its counsel

Petitioner is CNX Gas Company LLC, 2481 John Nash Blvd, Bluefield, WV 24701, (304)323-6500. Petitioner's counsel is Mark A. Swartz, Swartz Law Offices, 601 Sixth Avenue, Suite 201, P.O. Box 1808, St. Albans, WV 25177-1808..

2. Relief Sought

(1) Refund of escrow payments heretofore deposited with the Board's Escrow Agent(s); Reimburse overpayment of funds deposited with the Board's Escrow Agent attributable to unit EE33 to CNX Gas Company LLC. (2) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent(s) attributable to Tract(s) 2C & 2D as depicted upon the annexed Table 1; and (3) authorization to begin paying royalties directly to the parties to the Royalty Split between Swords Creek Land Partnership and Jackie Richardson and Phyllis Richardson, as well as authorization to begin paying royalties directly to the prevailing plaintiff; Dollie S. Absher

3. Legal Authority

Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

4. Type of Well(s)

Coalbed Methane

5. Factual basis for relief requested

The escrow account has been overpaid; Swords Creek Land Partnership and Jackie Richardson and Phyllis Richardson have entered into Royalty Split agreement. Said agreement allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and the annexed Table 1, further, specifies how said royalties are to be divided and paid. ☐

☐ In addition, Dollie S. Absher is entitled to 100% of the CBM royalties awarded under Case No. 11000283-00 and affirmed by Senior Justice Charles S. Russell, Opinion dated September 12, 2014, Record No: 131590. Said decision allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and the annexed Table 1, further, specifies how said royalties are to be paid. ☐

☐ There are no remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

6. Attestation

The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

PROPERTY LINES SHOWN WERE TAKEN FROM ARRANGEMENTS
BY CNX LAND RESOURCES, INC. AND WERE NOT SURVEYED

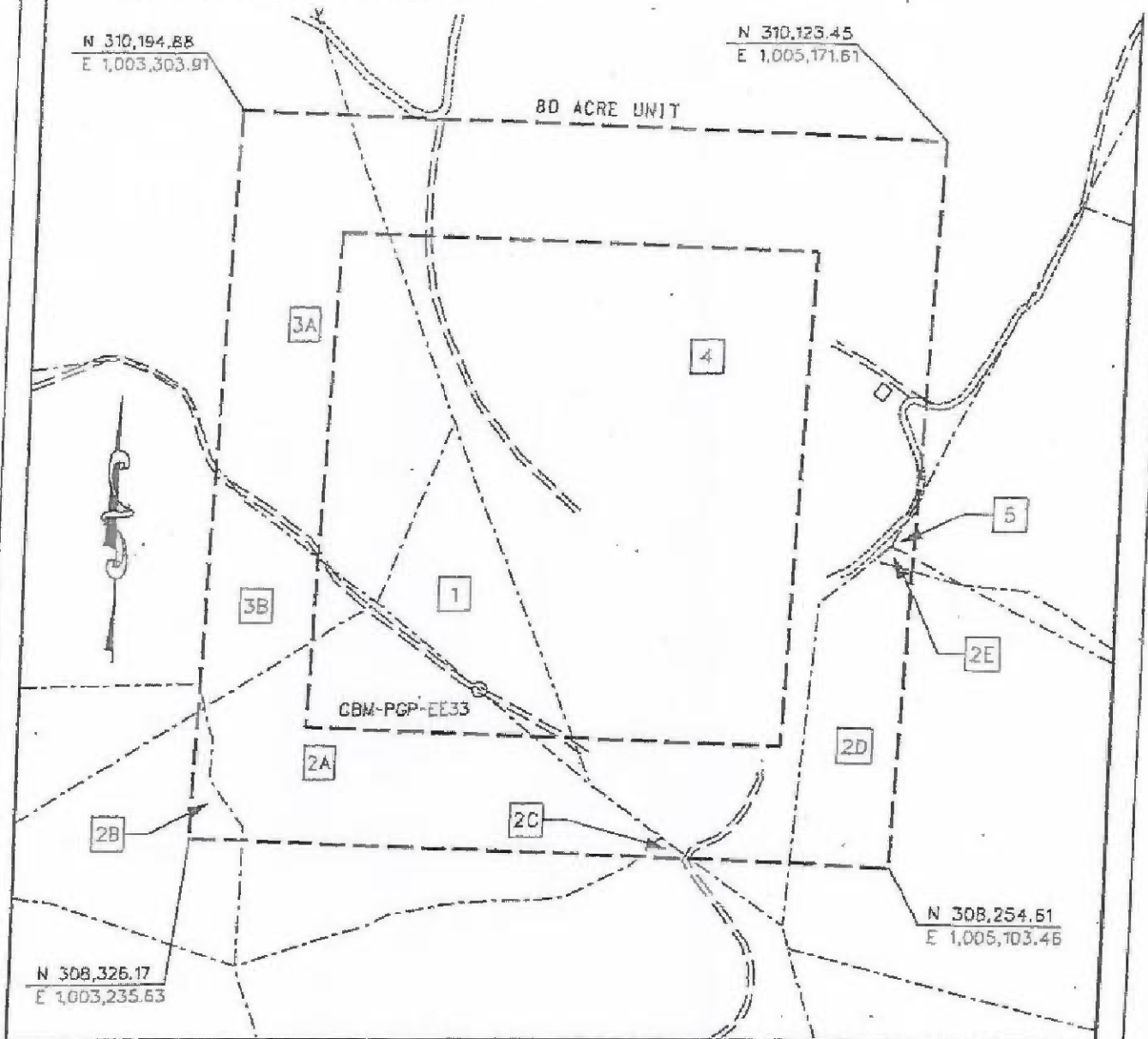


EXHIBIT A
OAKWOOD FIELD UNIT EE-33
FORCE POOLING
VGOB-02-0820-1054

Company Pocahontas Gas Partnership Well Name and Number UNIT EE-33
Tract No. _____ Elevation _____ Quadrangle GREEN MOUNTAIN MORGAN
County Buchanan/Russell District Garden/New Garden Scale: 1" = 1400' Date 7/19/02
This plat is a new plat X ; an updated plat _____ ; or a final plat No. _____

Form D60-GD-7
Rev. 9/91

Clayton D. Mays
Licensed Professional Engineer or Licensed Land Surveyor

10958
(Affix Seal)

140002057

POCAHONTAS GAS PARTNERSHIP

UNIT EE-33

Tract Identifications

1. Jackie Richardson, et al - Fee
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
4.11 acres 5.1375%
- 2A. Swords Creek Land Partnership Tr. 21 - Coal
Reserve Coal Properties Company - Below Tiller Coal Leased
Sandy Ridge Energy Corp. - Tiller and Above Coal Leased
Pocahontas Gas Partnership - CBM Leased
Clell Edward Metcalf, et al - Surface, Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
10.77 acres 13.4625%
- 2B. Swords Creek Land Partnership Tr. 21 - Coal
Reserve Coal Properties Company - Below Tiller Coal Leased
Sandy Ridge Energy Corp. - Tiller and Above Coal Leased
Pocahontas Gas Partnership - CBM Leased
Clell Edward Metcalf, et al - Surface, Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
0.47 acres 0.5875%
- 2C. Swords Creek Land Partnership Tr. 21 - Coal
Reserve Coal Properties Company - Below Tiller Coal Leased
Sandy Ridge Energy Corp. - Tiller and Above Coal Leased
Pocahontas Gas Partnership - CBM Leased
Jackie Richardson, et al - Surface, Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
0.08 acres 0.1000%
- 2D. Swords Creek Land Partnership Tr. 21 - Coal
Reserve Coal Properties Company - Below Tiller Coal Leased
Sandy Ridge Energy Corp. - Tiller and Above Coal Leased
Pocahontas Gas Partnership - CBM Leased
Dollie S. Belcher - Surface, Oil and Gas
4.13 acres 5.1625%
- 2E. Swords Creek Land Partnership Tr. 21 - Coal
Reserve Coal Properties Company - Below Tiller Coal Leased
Sandy Ridge Energy Corp. - Tiller and Above Coal Leased
Pocahontas Gas Partnership - CBM Leased
Edgar Wilson - Surface, Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
0.08 acres 0.1000%

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POCAHONTAS GAS PARTNERSHIP

UNIT EE-33

Tract Identifications

- 3A. Coal Mountain Mining Company Limited Partnership, L.L.P. Tr. 1 - Coal
Reserve Coal Properties Company - Below Drainage Coal Leased
Sandy Ridge Energy Corp. - Above Drainage Coal Leased
Pocahontas Gas Partnership - CBM Leased
New Garden coal Corp. - Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
12.56 acres 15.7000%
- 3B. Coal Mountain Mining Company Limited Partnership, L.L.P. Tr. 1 - Coal
Consolidation Coal Company - Below Drainage Coal Leased
New Garden Coal Corp. - Above Drainage Coal Leased
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
Clell Edward Metcalf, et al - Surface, Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
3.18 acres 3.9750%
4. Coal Mountain Mining Company Limited Partnership, L.L.P. Tr. 35 - Coal, Oil and Gas
Consolidation Coal Company - Below Drainage Coal Leased
New Garden Coal Corp. - Above Drainage Coal Leased
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
Jackie Richardson, et al - Surface
44.51 acres 55.6375%
5. Coal Mountain Mining Company Limited Partnership, L.L.P. Tr. 36 - Coal
Reserve Coal Properties Company - Below Drainage Coal Leased
Sandy Ridge Energy Corp. - Above Drainage Coal Leased
Pocahontas Gas Partnership - CBM Leased
Edgar Wilson - Surface, Oil and Gas
Pocahontas Gas Partnership - Oil, Gas and CBM Leased
0.11 acres 0.1375%

VG08 Disbursement
Unit EE33

VGOB-02-0820-1054-02

Table 2 (pay percentage on balance after deducting the above balance)

[illegible]

Wells contributing to the escrow account: PGP EE33 W/PL, CBM EE33A W/PL

Exhibit E

Unit EE-33

Docket #VGOB 02-0820-1054-02

List of Conflicting Owners/Claimants that require escrow

140002057

Acres in UnitInterest in
Unit*All Conflicts Resolved*

Exhibit EE

Unit EE-33

Docket #YGOB 02-0820-1054-02

List of Conflicting Owners/Claimants with Royalty Split Agreements or Court Orders

	Acres in Unit	Interest in Unit	Percent of Escrow
<u>Tract #2A, 10.77 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 29 Tazewell, VA 24651	10.77 acres	13.4625%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Clell Edward Metcalf, et al. (a.k.a. Cora Metcalf Franks Estate) c/o J.C. Franks 621 Peavler Street Marion, VA 24354	10.77 acres	13.4625%	n/a
<u>Tract #2B, 0.47 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 29 Tazewell, VA 24651	0.47 acres	0.5875%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Clell Edward Metcalf, et al. (a.k.a. Cora Metcalf Franks Estate) c/o J.C. Franks 621 Peavler Street Marion, VA 24354	0.47 acres	0.5875%	n/a
<u>Tract #2C, 0.08 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 29 Tazewell, VA 24651	0.08 acres	0.1000%	0.9501%
<u>OIL & GAS OWNERSHIP</u>			
(1) Jackie Richardson, et al. (36 acre tract)	0.08 acres	0.1000%	
(a) Jackie Richardson 37 Ratcliff Lane Cedar Bluff, VA 24609-8069	0.04 acres 1/2 of 0.08 acres	0.0500%	0.4751%
(b) Phyllis Richardson (sister) 37 Ratcliff Lane Cedar Bluff, VA 24609-8069	0.04 acres 1/2 of 0.08 acres	0.0500%	0.4751%
<u>Tract #2D, 4.13 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 29 Tazewell, VA 24651	4.13 acres	5.1625%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Dollie S. Absher 4674 Road Ridge Tpke. Raven, VA 24639 Previously Dollie S. Belcher (remarried)	4.13 acres	5.1625%	98.0998%

Prevailing plaintiff under Case No. 11000283-00 and Appeal Record No. 131590.
Awarded 100% of the CBM royalty.

Exhibit EE
Unit EE-33

Docket #VGOB 02-0820-1054-02

List of Conflicting Owners/Claimants with Royalty Split Agreements or Court Orders

	Acres in Unit	Interest in Unit	Percent of Escrow
<u>Tract #2E, 0.08 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 29 Tazewell, VA 24651	0.08 acres	0.1000%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Harold Wilson, et al (aka Edgar S. Wilson Heirs) (40.50 acre tract)	0.08 acres	0.1000%	
(a) Evelyn Geraldine Miller P.O. Box 147 Swords Creek, VA 24649	0.016 acres 1/5 of 0.08 acres	0.0200%	n/a
(b) William Norman Wilson 226 Fairview Lane Lebanon, VA 24266	0.016 acres 1/5 of 0.08 acres	0.0200%	n/a
(c) Harold Wilson 137 Baytree Road Cedar Bluff, VA 24609	0.016 acres 1/5 of 0.08 acres	0.0200%	n/a
(d) Janice Diane Keen Heirs, Devisees, Successors or Assigns			
(d.1) Howell P. Keen 3389 Lynn Springs Road Cedar Bluff, VA 24609	0.016 acres 1/5 of 0.08 acres	0.0200%	n/a
(e) Jeffery Earl Wilson 3795 Mill Creek Road Raven, VA 24639	0.016 acres 1/5 of 0.08 acres	0.0200%	n/a
<u>Tract #3A, 12.56 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Coal Mountain Mining Company, Tr.1 Limited Partnership, L.L.P. P.O. Box 675 Tazewell, VA 24651	12.56 acres	15.7000%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) New Garden Coal Corporation c/o Edward Vandyke P.O. Box 29 Tazewell, VA 24651	12.56 acres	15.7000%	n/a
<u>Tract #3B, 3.18 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Coal Mountain Mining Company, Tr.1 Limited Partnership, L.L.P. P.O. Box 675 Tazewell, VA 24651	3.18 acres	3.9750%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Clell Edward Metcalf, et al. (a.k.a. Cora Metcalf Franks Estate) c/o J.C. Franks 621 Peavler Street Marion, VA 24354	3.18 acres	3.9750%	n/a

Exhibit EE
Unit EE-33

Docket #VGOB 02-0820-1054-02

List of Conflicting Owners/Claimants with Royalty Split Agreements or Court Orders

	Acres in Unit	Interest in Unit	Percent of Escrow
<u>Tract #5, 0.11 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Coal Mountain Mining Company, Tr.36 Limited Partnership, L.L.P. P.O. Box 675 Tazewell, VA 24651	0.11 acres	0.1375%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Harold Wilson, et al (aka Edgar S. Wilson Heirs) (40.50 acre tract)	0.11 acres	0.1375%	
(a) Evelyn Geraldine Miller P.O. Box 147 Swords Creek, VA 24649	0.022 acres 1/5 of 0.11 acres	0.0275%	n/a
(b) William Norman Wilson 226 Fairview Lane Lebanon, VA 24266	0.022 acres 1/5 of 0.11 acres	0.0275%	n/a
(c) Harold Wilson 137 Baytree Road Cedar Bluff, VA 24609	0.022 acres 1/5 of 0.11 acres	0.0275%	n/a
(d) Janice Diane Keen Heirs, Devisees, Successors or Asslgn			
(d.1) Howell P. Keen 3389 Lynn Springs Road Cedar Bluff, VA 24609	0.022 acres 1/5 of 0.11 acres	0.0275%	n/a
(e) Jeffery Earl Wilson 3795 Mill Creek Road Raven, VA 24639	0.022 acres 1/5 of 0.11 acres	0.0275%	n/a
Total Acreage Resolved	31.3800		
Total Percentage Resolved		39.2250%	

140002057

IN THE CIRCUIT COURT OF RUSSELL COUNTY, VIRGINIA

DOLLIE BELCHER, et al.

Plaintiffs,

v.

Case No. 11000283-00

SWORDS CREEK LAND PARTNERSHIP,

Defendants.

**FINAL ORDER GRANTING LEAVE TO AMEND DEFENDANT'S ANSWER AND
SUMMARY JUDGMENT TO THE PLAINTIFFS**

THIS ACTION came on again to be heard on August 23, 2013 upon the papers heretofore read herein, this Court's Order entered November 21, 2012 granting the Defendant leave to file a Second Amended Counter-Claim; upon the Defendant's Second Amended Counter-Claim; upon the Plaintiffs' Demurrer to the Defendant's Second Amended Counter-Claim and the Plaintiffs' Motion for Judgment; upon oral argument presented by the Plaintiffs in support of their Motion for Demurrer and by the Defendant in opposition to the Plaintiffs' Demurrer and Motion for Summary Judgment on January 4, 2013; upon briefs submitted by both parties in support of their respective positions; upon the opinion letter of this Court on May 2, 2013; and upon the Defendant's Motion to stipulate certain factual allegations of Plaintiffs' Motion for Judgment, but not the Plaintiffs' conclusions drawn therefrom, or in the alternative, for leave to amend its Answer and for entry of final judgment, and for determination of penalty of bond for costs and suspension; upon Plaintiffs' Motion for Stay filed on June 11, 2013; upon Plaintiffs' Motion to Withdraw their Request for Motion for Summary Judgment filed on June 18, 2013; and upon Defendant's Motion to Dismiss on August 19, 2013, and was argued by counsel.

WHEREUPON, it appearing to the Court that the Defendant is either entitled to the stipulation requested, or to amend its Answer to admit the allegations of fact in Plaintiffs' Motion for Judgment which were the basis for denial of Summary Judgment by this Court in its May 2, 2013 opinion letter; and it further appearing that counsel for the Plaintiffs, who was directed to prepare an Order reflecting the Court's May 2, 2013 opinion has failed to submit an Order to opposing counsel or the Court; it is Adjudged and Ordered that the Defendant's Motion to amend its Answer to the Plaintiffs' Motion for Judgment is hereby granted and Amended Answer submitted to the Court with this Order is hereby marked "filed."

WHEREUPON, it appearing to the Court from the memoranda filed with the Court and argument presented by counsel proper so to do, Plaintiffs' Motion to Stay and Motion to Withdraw their Motion for Summary Judgment are denied for the reason stated upon the record. Likewise, Defendant's Motion to Dismiss is also denied.

WHEREUPON, upon consideration of the foregoing and this Court's opinion of May 2, 2013, the Court sustains the Plaintiff's Demurrer to the Defendant's Second Amended Counterclaim and the same is hereby dismissed with prejudice. Further the Court grants the Plaintiffs Summary Judgment upon their Motion for Judgment (complaint), as there are no material facts genuinely in dispute between the parties, and for the reasons set forth in the Court's letter opinions dated October 4, 2012, and May 2, 2013, ^{And September 17, 2013} which are attached hereto and incorporated herein by reference; and on Motion of the Defendant the Court hereby suspends execution of its final judgment in favor of the Plaintiffs, pending appeal to the Supreme Court of Virginia and orders the Defendant to submit bond for costs and suspension as provided in Section 8.01-676.1 and Form 2 found in the Appendix of Forms attached to Rule 5 of the Rules

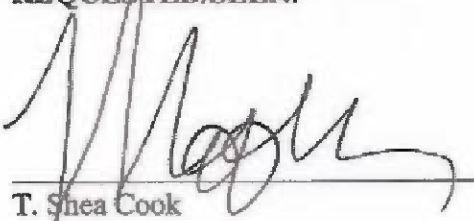
of the Supreme Court of Virginia, in the penalty of \$500.00 within 30 days of the date of entry of this Final Order of Judgment.

The Clerk is directed to forward an attested copy of this Order to counsel of record, and to remove this action from the active docket of this Court and to place the same among the ended actions before this Court.

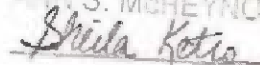
Enter: this ^{17th} ~~23rd~~ day of ^{September} ~~August~~, 2013.


MICHAEL L. MOORE, JUDGE

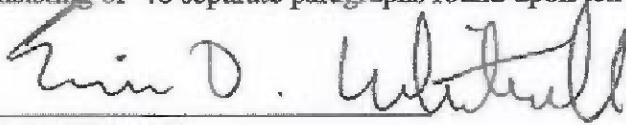
REQUESTED/SEEN:


T. Shea Cook

Counsel for Plaintiffs,
Dollie Belcher, *et al.*

A COPY TESTE
ANN S. McREYNOLDS, CLERK
 D. CLERK

SEEN AND OBJECTED TO by the Defendant, Swords Creek Land Partnership for the reasons set forth in its Amended Answer to Plaintiffs' Complaint, its Demurrer to Plaintiffs' Complaint and Motion to Dismiss, as set forth in the Defendant's Counterclaim and the objection and exceptions of Swords Creek Land Partnership to the Order sustaining Plaintiffs' Demurrer to Defendant's Counterclaim, for the reasons set forth in Defendant's Second Amended Counterclaim hereto attached, and the additional exceptions to the Court's Order sustaining the Plaintiffs' Demurrer to Defendant's First and Second Amended Counterclaims hereto attached, consisting of 48 separate paragraphs found upon ten pages attached to this Order.



Eric D. Whitesell
Gillespie, Hart, Altizer and Whitesell, P.C.
P.O. Box 718
Tazewell, VA 24651

Blair M. Gardner
Jackson Kelly, PLLC
P.O. Box 553
Charleston, WV 25322

Counsel for Defendant,
Swords Creek Coal Company, LLLP

PRESENT: Lemons, Goodwyn, Millette, Mims, and Powell, JJ.,
and Russell and Koontz, S.JJ.

SWORDS CREEK LAND PARTNERSHIP

v. Record No. 131590

DOLLIE BELCHER, ET AL.

OPINION BY

SENIOR JUSTICE CHARLES S. RUSSELL

September 12, 2014

FROM THE CIRCUIT COURT OF RUSSELL COUNTY

Michael L. Moore, Judge

This appeal requires us to revisit the questions arising from the interpretation of a severance deed conveying ownership of, and the right to remove, coal and timber. The dispute before us is between the present owners of the surface of the land and the successors-in-interest to the grantees of the coal rights. The parties assert conflicting claims to royalties generated by the extraction of coal bed methane gas (CBM) from the coal seams underlying the property.

Facts and Proceedings

There are no material facts in dispute. In 1887, Christopher Richardson and Amanda Richardson, his wife, owned a 891 3/4-acre tract of land in Russell County. On February 7, 1887, they executed a deed conveying to Joseph I. Doran and W. A. Dick

all of the coal, in, upon or underlying a certain tract of land and the timber and privileges hereinafter specified as appurtenant to said tract of land [metes and bounds description follows] to enter on, over, upon, and through said tract of land for the purpose of digging, mining, or

otherwise securing the coal and other things in and on said tract of land hereinbefore specified, and removing the same from off said land

And, as appurtenant to said tract of land, and the rights hereinbefore granted, all the timber except as hereinbefore excepted on said tract of land that may be necessary to use to successfully and conveniently mine said coal and other things above mentioned and granted; and the right to the said [grantees and their assigns] to enter on, over, upon, and through said tract of land for the purpose of digging, mining, or otherwise securing the coal and other things in and on said tract of land hereinbefore specified, and removing the same from off said lands; the right to pass through, over, and upon said tract of land by railway or otherwise, to reach any other lands belonging to the said [grantees] for the purpose of digging for, mining, or otherwise securing the coal and other things hereinbefore specified, and removing same from off such other land

This severance deed included a general warranty of title and covenants of quiet possession and freedom from encumbrances.

The parties to this appeal are Dollie Belcher, Doris E. Dye and Ruby Lawson, successors-in interest to the grantors named in the 1887 severance deed (the Surface Owners) and Swords Creek Land Partnership, successor-in-interest to the grantees named in the deed (the Coal Owner).

In 1991, the Coal Owner entered into a lease with Pocahontas Gas Partnership, granting to the lessee "all rights [the lessor] has" to all the natural gas, including CBM,

underlying the Russell County tract described in the 1887 severance deed. The lease was for a term of 10 years and was to continue thereafter as long as gas production or drilling and other exploratory operations should continue. The lessee was to pay the Coal Owner a royalty of 12.5% of the value of the gas produced. The lease granted the lessee the exclusive right to enter, drill, inject liquids into, explore and have access to the coal seams under the land. CNX Gas Company, LLC. (CNX) is the successor-in-interest to the original lessee. Neither CNX nor its predecessor lessees acquired any rights from the Surface Owners.

The Virginia Gas and Oil Act, Code §§ 45.1-361.1 et seq. (the Act), first adopted in 1982, was amended in 1990 to permit CBM production to go forward in cases in which there was conflict or uncertainty as to the ownership of the CBM produced. Code § 45.1-361.22 permits a CBM well operator, such as CNX in the present case, to produce and sell CBM when any claimant petitions the Virginia Gas and Oil Board (the Board), after giving notice to all other claimants, to enter a "pooling order." The claimants' interests are "pooled" by the Board's order and an interest-bearing escrow account for the benefit of all claimants is established. Id. The well operator is required to pay into the escrow account a royalty of 1/8 of the value of all CBM produced. Id. The funds remain in escrow

until all claimants have either reached a voluntary settlement of their claims, the interests of the claimants have been finally determined by a court of competent jurisdiction, or a final award of arbitration has taken effect pursuant to Code § 45.1-361.22:1. Id.

On the petition of CNX, the Board entered such a pooling order on June 16, 1992, followed by several supplemental orders. Since that date CNX has been producing CBM from the coal seams underlying the land and paying the required royalties into the Board's escrow account. At the time of the circuit court's hearing, CNX was operating six gas wells on the property.

On April 25, 2011, the Surface Owners filed this action in the circuit court against the Coal Owner, seeking a declaratory judgment. The Surface Owners contended that they were the sole owners of the CBM produced from their land and entitled to all the royalties therefrom, including those held in escrow by the Board and those yet to accrue. CNX was not made a party.

Because the parties agreed that no material facts were in dispute, the court heard the case on the Surface Owners' motion for summary judgment. On September 17, 2013, the court, by a letter opinion, held that the 1887 severance deed was unambiguous, that it conveyed to the Coal Owner only coal, timber and access rights pertaining to those two commodities and that CBM is a "distinct mineral estate" that was not conveyed by

the severance deed. The court entered an order declaratory of the Surface Owners' ownership of the CBM and right to receive the royalties therefrom. We awarded the Coal Owner an appeal.

Analysis

The dispositive question in this appeal is whether the granting clause in the 1887 severance deed embraced CBM as well as coal. A decade ago, we considered a case involving the same legal question and very similar facts. Harrison-Wyatt, LLC v. Ratliff, 267 Va. 549, 593 S.E.2d 234 (2004), was a dispute between surface owners and a coal owner over escrowed funds held by the Board as royalties accruing from the production of CBM. The decision depended upon the interpretation of a 19th century severance deed that conveyed to the coal owner's predecessor "all the coal in, upon, and underlying" the land. Id. at 551, 593 S.E.2d at 235. After considering the scientific evidence in the record, the decisions of the highest courts of sister states and the Supreme Court of the United States, Justice Stephenson wrote, for a unanimous Court:

We do not believe the term "coal," as it was used in the late 19th century, is ambiguous. As commonly understood at the time, the term "coal" meant a solid rock substance used as fuel, and nothing in the record indicates that CBM is a part of coal itself. On the other hand, although CBM has a weak physical attraction to coal and escapes from coal when coal is mined, it is a gas that exists freely in the coal seam and is a distinct mineral estate. Moreover, the parties could

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not have contemplated at the time the severance deeds were executed that CBM would become a very valuable energy source. We hold, therefore, that title to the CBM did not pass to the Coal Owner. . . .¹

Id. at 556, 593 S.E.2d at 238 (citations omitted).

We adhere to that holding. The Coal Owner argues, however, that Harrison-Wyatt is inapposite because that case involved the production of CBM from "gob wells" where the gas had "migrated" away from the coal and had collected elsewhere in the mine, while the CBM in the present case remains within the coal seam until the seam is fractured or otherwise disturbed. Because of our view that CBM is not a constituent part of coal at any time but rather is a separate mineral estate, we do not agree with the Coal Owner.

We therefore turn to the four corners of the severance deed to ascertain whether its granting clause can be construed to convey any mineral estate beyond coal. The Coal Owner contends that it is ambiguous, requiring resort to traditional rules of construction. (Wh. Br. 15-20) In CNX Gas Company, LLC v. Rasnake, 287 Va. 163, 166-67, 752 S.E.2d 865, 867 (2014), we stated the following: "Where the language of a deed clearly and

¹In 2010, the General Assembly added Code § 45.1-361.21:1 to the Act, which provides in part: "A conveyance, reservation, or exception of coal shall not be deemed to include coalbed methane gas." See 2010 Acts chs. 730, 762.

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unambiguously expresses the intention of the parties, no rules of construction should be used to defeat that intention. Where, however, the language is obscure and doubtful, it is frequently helpful to consider the surrounding circumstances and probable motives of the parties." In that case, decided earlier this year, we found the granting clause under consideration to be ambiguous, capable of reasonable interpretation in at least three different ways. It required us to go outside the four corners of the deed in order to ascertain the intent of the parties. Id. at 167-69, 752 S.E.2d at 867-68. Examination of the granting clause in the present case brings us to the opposite conclusion and, accordingly, to the opposite result.

We agree with the circuit court's conclusion that the granting clause is an unambiguous grant of coal, timber and access rights to those two commodities. While not concise, its frequent references to "other things" and "rights and privileges" are invariably limited by such qualifying phrases as "hereinafter specified," "hereinbefore specified," "hereinbefore granted," and "above mentioned." Each of these qualifying phrases refers the reader back to coal, timber, and access rights pertaining to those commodities. In light of the 19th century understanding of the meaning of the word "coal," there is no ambiguity as to the intentions of the parties to the severance deed.

The Coal Owner finally contends that it has conferred a benefit upon the Surface Owners by causing CBM to be produced from their property, resulting in unjust enrichment to the Surface Owners. The Coal Owner argues that the circuit court erred in refusing to impose a constructive trust on the royalties in its favor. We agree with the circuit court's ruling that this contention lacks merit.

We hold that the CBM was at all times the property of the Surface Owners, and the Coal Owner conferred no benefit upon the Surface Owners. The Coal Owner further argues that it had the "exclusive right of access" to the coal seam under the severance deed and that the Surface Owners could never have obtained CBM from it without the Coal Owner's consent. That argument overlooks the fact that the Coal Owner's right of access to the coal seam is limited by the severance deed to access for the sole purposes expressed in the deed, namely, the mining, extraction and removal of coal, together with limited quantities of timber.

In Harrison-Wyatt, we declined to consider the issue whether the surface owner has the right to fracture a coal seam, because the issue had not been raised by the parties at trial or on appeal. 267 Va. at 557 n.3, 593 S.E.2d at 238 n.3. That issue is not before us in the present case because here the Coal Owner, by entering into its lease with CNX, permitted the

fracturing of the coal seam without any participation by the Surface Owners.² We find no evidence in the record from which it may be inferred that the Surface Owners could reasonably be expected to repay the Coal Owner for the inevitable release of CBM as a result of the fracturing of the coal seam by the Coal Owner's lessee. Therefore, the Coal Owner has no equitable claim against the Surface Owners for unjust enrichment.

Conclusion

We conclude that the Surface Owners have at all times owned all mineral estates within their lands except coal, and are entitled to all royalties accrued from the production of CBM therefrom and those yet to accrue. For the reasons stated, we will affirm the judgment.

Affirmed.

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VIRGINIA: IN THE OFFICE OF THE CLERK OF THE CIRCUIT OF RUSSELL COUNTY, 12-11, 2014, This deed was this day presented in said office, and upon the certificate of acknowledgment thereto annexed, admitted to record at 3:41 o'clock P M, after payment of \$ tax imposed by Sec. 58.1-802.

Original returned this date to: Sarah Jessee

TESTE: ANN S. McREYNOLDS, CLERK
BY: Jennifer Kendrick D. CLERK

² CNX is not a party to this case and our holding has no effect upon the mutual rights and obligations arising under its lease.

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INSTRUMENT #140002057
RECORDED IN THE CLERK'S OFFICE OF
BUCHANAN COUNTY ON
DECEMBER 12, 2014 AT 12:06PM

BEVERLY S. TILLER, CLERK
RECORDED BY: GGB